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COMMONWEALTH OF VIRGINIA

JOINT PETITION OF DOMINION RESOURCES, INC. AND CONSOLIDATED NATURAL GAS COMPANY **CASE NO. PUA990020**

For approval of agreement and plan of merger under Chapter 5 of Title 56 of the Code of Virginia.

HEARING EXAMINER'S RULING

August 9, 1999

On July 30, 1999, Dominion Resources, Inc. and Consolidated Natural Gas Company (jointly, "Petitioners") filed a Motion requesting the entry of a Protective Order setting forth the procedures by which confidential information and documents and competitively sensitive information and documents shall be handled generally in this proceeding.

Upon consideration of Petitioner's request, I am of the opinion and find that protected treatment is warranted for such confidential and competitively sensitive information.¹ Accordingly,

IT IS DIRECTED THAT any documents, materials, and information to be produced by Petitioners, either for themselves or for their affiliates, or to be produced by any party ("Party") in this proceeding in response to Commission orders, Commission Staff ("Staff") data requests or properly propounded interrogatories or requests for production of documents from Parties in this proceeding, which documents, materials, or information the producing party designates and clearly marks as confidential ("Confidential Information"), shall be produced, examined and used only in accordance with the following conditions:

- (1) All Confidential Information provided to Petitioners, Staff, or Parties shall be used solely for the purposes of this proceeding (including any appeals).
- (2) Access to Confidential Information shall be specifically limited to Petitioners, Staff or Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the direction of their counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purposes of this

¹The draft order attached to the Motion has been modified to more closely comport with the protection afforded in another current Commission case. *Commonwealth of Virginia At the relation of the State Corporation Commission Ex Parte: In the matter of considering an electricity retail access pilot program – Electric and Power Company*, Hearing Examiner's Ruling, Case No. PUE980813, June 29, 1999.

proceeding, so long as each such person has executed an Agreement to Adhere to the Protective Ruling ("Agreement"), which is Attachment A to this Ruling. All Agreements must be promptly forwarded to the producing party upon execution.

- (3) In the event that Petitioners, Staff or Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized to receive such information under paragraph (2) above, the party or the Staff desiring permission shall obtain the consent of counsel for the producing party. In the event of a negative response, the party or the Staff seeking disclosure permission may apply to the Commission for such permission.
- (4) The producing party shall be under no obligation to furnish Confidential Information to persons other than those authorized to receive such information under paragraph (2) above unless specifically ordered by the Commission to do so. The Staff and parties are encouraged to seek consents to the maximum extent practicable.
- (5) (a) Where a party contends that due to the Competitively Sensitive nature of requested documents or materials the procedures for treatment of Confidential Information fail to provide adequate safeguards, the party producing the Competitively Sensitive material shall be required to provide the documents for review, in the offices of the producing party, by only counsel and designated regulatory and legal personnel and outside expert witnesses, employed or retained by the parties and under the direction and control of counsel. These parties may review, but not copy, the documents sought to be protected, and they must agree to treat the Competitively Sensitive Information according to the provisions of this protective ruling, and shall sign and forward an Agreement (Attachment A) to the producing party. Employees, officers, or directors of a party, or consultants or experts retained by a party, who have been and who are currently involved in marketing shall not be provided access to Competitively Sensitive Information. Individuals who become viewing representatives under this paragraph may not engage in or consult in any marketing activities proscribed in the previous sentence for three (3) years beginning and continuing after first viewing such Competitively Sensitive Information. A party may not withhold access to information solely on the basis that the requested information is Competitively Sensitive. For purposes of this section, Staff is not considered a party.
- (b) Where a party contends that it should not be required to produce specific documents or materials due to their Competitively Sensitive nature and some other grounds, such as relevancy, the party raising such an objection must state clearly each of its grounds for objecting to the interrogatory or data request including that the requested information is Competitively Sensitive. In responding to any motions to compel, the party contending that it should not be required to produce the Competitively Sensitive Information shall specify any factual or legal predicates supporting its claim and shall provide a log enumerating all such information. The log shall specify the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (e.g., computer-stored information,

microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying the requested information; (iv) its present location and custodian; (v) the nature of the information; and (vi) why the procedures for treatment of Confidential Information are not adequate safeguards.

- (6) The Clerk of the Commission is directed to maintain under seal all documents, materials and information filed with the Commission in this proceeding which the producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.
- (7) In the event Petitioners, Staff or Parties seek to introduce at a hearing testimony, exhibits, or studies that disclose Confidential Information, the Staff or the party seeking such introduction shall:
 - (a) notify the producing party at least three (3) days in advance of any such hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party;
 - (b) if such testimony is prefiled, file such testimony, exhibits or studies with the Commission under seal and serve on all parties of record copies of the testimony, exhibits, or studies deleting those parts that contain references to or portions of the designated Confidential Information. The testimony, exhibits, or studies containing the Confidential Information filed with the Commission shall be kept under seal unless and until the Commission rules otherwise. Each party shall, upon signing Attachment A hereof, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the Confidential Information and each party and counsel shall be bound by this ruling insofar as it restricts the use of and granting of access to the Confidential Information.
- (8) Oral testimony regarding Confidential Information, if ruled admissible by the Commission, will be taken <u>in camera</u> and that portion of the transcript recording such testimony shall be placed in the record under seal.
- (9) In the event Petitioners, Staff, or Parties seek to introduce at a hearing testimony, exhibits or studies that disclose Competitively Sensitive Information, the Staff or the party seeking such introduction shall notify the producing party at least three (3) days in advance of any such hearing unless a shorter period would not unduly prejudice the producing party. Any testimony regarding Competitively Sensitive Information shall be taken in camera and in the presence of only those persons who have been granted access to the specific Competitively Sensitive Information pursuant to a nondisclosure agreement with the producing party. That portion of the transcript recording such testimony shall be placed in the record under seal.

- (10) No person authorized under this Protective Ruling to have access to Confidential Information or Competitively Sensitive Information shall disseminate, communicate, or reveal any such Confidential Information or Competitively Sensitive Information to any person not specifically authorized under this ruling to have access.
- (11) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information and Competitively Sensitive Information produced pursuant to this Ruling, including notes and extracts, shall be returned by Petitioners and Parties to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals, reproductions, notes and extracts of any Confidential Information and Competitively Sensitive Information in Staff's possession shall be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information and Competitively Sensitive Information.
- (12) This Ruling does not preclude Petitioners, Staff or Parties from arguing, prior to public disclosure, that documents, materials, and information received under the Ruling should not be treated as confidential. But in no event shall the Staff or any Party disclose Confidential Information and Competitively Sensitive Information it has received subject to this Ruling absent a finding by the Examiner or the Commission that such information does not require confidential treatment. Any party objecting to treating information as either Confidential or Competitively Sensitive may file with the Clerk of the Commission a motion seeking *in camera* review by the Hearing Examiner of the documents alleged to be subject to treatment as Confidential or Competitively Sensitive. The burden of proving that documents, materials, or information require confidential treatment as trade secrets, commercially, competitively, or personally sensitive information, or other grounds for confidential treatment shall be upon the proponent of maintaining the documents, materials, or information in confidence.
- (13) A producing party is obligated to separate non-confidential and non-competitively sensitive documents, materials, and information from Confidential Information and Competitively Sensitive Information wherever practicable, and to provide the non-confidential and non-competitively sensitive documents, materials, and information.
- (14) Any party who obtains Confidential Information or Commercially Sensitive Information and thereafter misuses it in any way shall be subject to sanctions as the Commission may deem appropriate, in addition to any other liabilities which might attach from such misuse.

Deborah V.	Ellenberg	

Chief Hearing Examiner